

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

MAY 11 1998

In the Matter of

Communications Assistance for  
Law Enforcement Act

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CC Docket No. 97-213  
DA 98-762

COMMENTS OF THE PERSONAL  
COMMUNICATIONS INDUSTRY ASSOCIATION

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## SUMMARY

PCIA's messaging and broadband PCS members are committed to building and providing the capability and capacity required by CALEA. Unfortunately, while the deadline for meeting the assistance capability requirements is October 25, 1998, carriers cannot fully discharge their statutory obligations until law enforcement's requirements have been identified for broadband and narrowband services, and appropriate final industry standards have been established. Therefore, it is imperative that the Commission promptly extend the October 25, 1998 compliance deadline.

Because of understandable resource constraints, the FBI has not been able to identify its capacity and capability requirements for the messaging industry. Nevertheless, this has not stopped the paging industry from continuing its well-established tradition of cooperating with law enforcement officials by providing them, pursuant to a valid warrant, with cloned pagers, and by working to develop standards to satisfy the assistance capability requirements of CALEA. Without the input of the FBI, however, especially in promulgating the capacity requirements, the messaging industry will be unable to develop technical standards it can be sure will meet all the practical needs of law enforcement.

On the broadband side, although an interim standard—J-STD-025—has been promulgated for PCS equipment, that standard is currently under attack as deficient by both the Federal Bureau of Investigation and the Department of Justice ("FBI/DOJ") and by the Center For Democracy in Technology ("CDT"). In particular, the FBI/DOJ believes that the interim standard is deficient because it is under-inclusive in failing to contain the nine "punch list" features it has demanded. Conversely, the CDT believes the interim standard is over-inclusive in

that it requires carriers to provide law enforcement officials with the location of mobile callers and with access to the full content of packet switched data.

The uncertainty surrounding the status of these standards has made it technically impractical and financially imprudent for wireless manufacturers to build CALEA-compliant equipment, and equally imprudent for carriers to buy such equipment. The Commission should not force manufacturers to undergo the effort and expense of designing, building, and testing telecommunications equipment that might be made obsolete as soon as a final standard is promulgated. Similarly, carriers should not be required to purchase equipment of such ephemeral utility. Therefore, the Commission should not require either messaging providers or broadband PCS carriers to meet CALEA's assistance capability requirements until two years from the date of the Commission's final standards-setting decision for each of these services.

Finally, the Commission should utilize its broad powers under CALEA and its "necessary and proper" authority under Section 4(i) of the Communications Act to extend the Section 103 compliance deadline on a blanket basis for all carriers, based on trade association petitions. Such a comprehensive approach will conserve the Commission's resources, and will prevent every carrier in the United States from filing an individual extension request in order to protect itself from potential liability. In light of the imminence of the October 25, 1998 deadline, the Commission should grant this blanket extension as soon as possible.

## CONTENTS

<b>I. INTRODUCTION.....</b>	<b>2</b>
<b>II. STATUTORY CRITERIA FOR AN EXTENSION OF THE COMPLIANCE DEADLINE .....</b>	<b>4</b>
<b>III. WHILE PAGING PROVIDERS ROUTINELY COOPERATE WITH LAW ENFORCEMENT OFFICIALS, THERE IS STILL SUBSTANTIAL UNCERTAINTY REGARDING THEIR OBLIGATIONS UNDER CALEA .....</b>	<b>5</b>
<b>IV. THE COMMISSION SHOULD FOLLOW TIA’S RECOMMENDATIONS AND ALLOW BROADBAND PCS CARRIERS TWO YEARS FROM THE DATE STANDARDS ARE PROMULGATED TO COMPLY WITH CALEA’S ASSISTANCE CAPABILITY REQUIREMENTS .....</b>	<b>9</b>
<b>V. THE COMMISSION HAS THE JURISDICTION TO ISSUE A BLANKET EXTENSION, AND SHOULD DO SO AS QUICKLY AS POSSIBLE.....</b>	<b>11</b>
<b>VI. CONCLUSION .....</b>	<b>15</b>

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The Personal Communications Industry Association ("PCIA"),<sup>1</sup> by its attorneys, hereby submits its comments on the Commission's Public Notice in the above-captioned proceeding.<sup>2</sup> As described in greater detail below, the Commission should, consistent with its statutory authority, extend the deadlines for compliance with the assistance capability requirements of Section 103 of the Communications Assistance for Law Enforcement Act ("CALEA") for

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<sup>1</sup> PCIA is the international trade association created to represent the interests of both the commercial and the private mobile radio service communications industries. PCIA's Federation of Councils includes: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Site Owners and Managers Association, the Association of Wireless Communications Engineers and Technicians, the Private Systems Users Alliance, and the Mobile Wireless Communications Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

<sup>2</sup> Public Notice, *Communications Assistance for Law Enforcement Act*, DA 98-762 (April 20, 1998) ("*Notice*").

broadband and narrowband CMRS providers until two years after the dates the final technical standards for each service's equipment are promulgated.

## I. INTRODUCTION

In its *Notice*, the Commission noted that a number of parties had filed petitions to establish technical standards for CALEA-compliant equipment, and to extend the compliance deadline for meeting the assistance capability requirements of Section 103 of CALEA. In this round of the current rulemaking, the Commission requests "specific comments on the issues raised concerning compliance with CALEA obligations, including any extension of the October 1998 compliance date."<sup>3</sup> PCIA, for the reasons described below, fully supports those petitioners that seek an extension of the compliance deadline.<sup>4</sup> Moreover, because a large number of PCIA's member companies are either paging providers or PCS carriers, this petition focuses on the unique needs of these industries in the context of CALEA compliance.

Pursuant to the "assistance capability requirements" of Section 103(a) of CALEA, by October 25, 1998, telecommunications carriers are generally required to ensure that their equipment, facilities, and services are capable of providing law enforcement with certain call content information, and "call identifying information that is reasonably available to the carrier."<sup>5</sup> As explained in Section 107, the Attorney General is required to consult with the telecommunications industry's standard-setting organizations in order to assist these

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<sup>3</sup> *Id.* at 4.

<sup>4</sup> See Center for Democracy and Technology Petition at 5 (March 26, 1998); Telecommunications Industry Association Petition at 2 (April 2, 1998); AT&T Wireless Services, Inc., Lucent Technologies, Inc., and Ericsson, Inc. Petition at 2 (March 30, 1998).

<sup>5</sup> 47 U.S.C. § 1002(a).

organizations in promulgating technical standards for CALEA-compliant telecommunications equipment.<sup>6</sup> These standards were intended to allow manufacturers to build equipment that meets the assistance capability requirements of Section 103(a). Manufacturers and carriers are further required to cooperate in order to ensure that carriers are provided with CALEA-compliant equipment “on a reasonably timely basis and at a reasonable charge.”<sup>7</sup> Thus, in enacting CALEA, Congress envisioned a cooperative process whereby industry standards-setting bodies would promulgate technical standards for CALEA-compliant equipment, and manufacturers would utilize these standards to provide telecommunications carriers—including PCS and messaging providers—with timely access to such equipment. Prompt standard setting is critical, because it is generally accepted that it takes at least two years from the date final standards are promulgated to begin the commercial production of CALEA-compliant equipment.

In return law enforcement was to provide industry, not less than one year after CALEA’s enactment, with notice of its simultaneous capacity requirements.<sup>8</sup> Industry would then have three years to factor these requirements into its capability standard, and design and install the additional equipment necessary to implement this capacity requirement.

Unfortunately, the Congressionally-envisioned gradual, and low cost, transition to CALEA-compliant equipment has not taken place. Consistent with the CALEA statutory scheme, Congress expected that sometime between the October 25, 1994 CALEA enactment date and the October 25, 1998 assistance capability compliance deadline, technical standards would

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<sup>6</sup> 47 U.S.C. § 1006(a)(1).

<sup>7</sup> 47 U.S.C. § 1005(a).

<sup>8</sup> 47 U.S.C. § 1003(a).

be promulgated and CALEA-compliant PCS and paging equipment would be made commercially available. Thus, as PCS providers built out their network infrastructure over this four year period, they would be purchasing compliant equipment that would not need to be retrofitted solely to comply with CALEA. Similarly, as messaging providers naturally upgraded and replaced their network infrastructure over this four year period, they would be replacing old, non-compliant equipment with new, compliant equipment without significant financial burden. In other words, as a result of the timely availability of compliant equipment, CMRS carriers would not have to make a large and sudden investment in new equipment at the compliance deadline in order to make their networks capable of meeting the assistance capability and capacity requirements.

Because the compliance deadline is fast-approaching, and this Congressionally-envisioned gradual and low-cost transition to CALEA-compliant equipment has *not* taken place, the Commission must extend the compliance deadline for both broadband and narrowband CMRS providers. Given the circumstances facing the CMRS industry, such an extension is both necessary and consistent with the letter and the spirit of CALEA.

## **II. STATUTORY CRITERIA FOR AN EXTENSION OF THE COMPLIANCE DEADLINE**

Under Section 107(c) of CALEA, the Commission may, “after consultation with the Attorney General,” grant an extension of the deadline for complying with the assistance capability requirements, if “compliance with the assistance capability requirements ... *is not reasonably achievable through application of technology available within the compliance*



*period.*”<sup>9</sup> When determining whether compliance with the assistance capability requirements is “reasonably achievable,” the Commission is directed to consider the effect of compliance on, *inter alia*: (1) the need to achieve the assistance capability requirements by “cost effective methods;” (2) the nature, cost, and operation of the equipment, facility, or service at issue; and (3) public safety and national security.<sup>10</sup> As discussed below, the circumstances faced by both the paging and the PCS industries clearly fit within these statutory criteria, and warrant an extension of the October 25, 1998 compliance deadline.

### **III. WHILE PAGING PROVIDERS ROUTINELY COOPERATE WITH LAW ENFORCEMENT OFFICIALS, THERE IS STILL SUBSTANTIAL UNCERTAINTY REGARDING THEIR OBLIGATIONS UNDER CALEA**

PCIA’s paging carrier members have routinely cooperated with law enforcement officials both before and after the passage of CALEA. Such cooperation takes the shape of paging carriers providing law enforcement officials, pursuant to valid court orders, with subscriber information and the CAP codes<sup>11</sup> of specific pagers, as well as clone pagers with these CAP codes installed. These clone pagers allow law enforcement officials to surreptitiously receive whatever messages the target of the electronic surveillance warrant is receiving on his or her pager, thereby satisfying the intent of CALEA to provide law enforcement officials with call content and call identifying information.<sup>12</sup> Indeed, the FBI has repeatedly advised the paging

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<sup>9</sup> 47 U.S.C. § 1006(c)(2) (emphasis added).

<sup>10</sup> 47 U.S.C. § 1008(b)(1).

<sup>11</sup> A pager’s CAP code is the radio signaling scheme address for the pager.

<sup>12</sup> The Clone Pager Authorization Act of 1996, S. 170, 105<sup>th</sup> Cong. (1997), has been passed by the Senate and referred to the House of Representatives. This Act will clarify that paging providers are legally obligated to provide law enforcement officials, pursuant to a court

(Continued...)

industry that traditional, one-way paging services (which comprise approximately 95 percent of the current paging market) can satisfy CALEA obligations through continued use of cloned pagers.

Further, since October 1994, when CALEA was signed into law, the FBI has consistently stated that it will utilize its limited implementation resources in a manner that allows law enforcement officials to conduct the types of electronic surveillance that will have the greatest impact on thwarting and prosecuting criminal activity. Consistent with this philosophy, the FBI has properly focused its efforts on developing the ability to monitor potential illegal activity that is conducted using local exchange, cellular, and PCS facilities. The FBI has further acknowledged that it intends to describe paging providers' responsibilities under CALEA only after it has addressed these other carriers.<sup>13</sup>

CALEA requires the FBI to: (1) promulgate final capacity requirements by October 25, 1995;<sup>14</sup> and (2) cooperate with industry standards-setting bodies to help translate CALEA's assistance capability requirements into technical standards for the manufacture of telecommunications equipment.<sup>15</sup> Because of its understandable prioritization of its resources, the FBI has been unable to satisfy either of these requirements. As noted above, the *Final*

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(...Continued)  
order, with access to "clone pagers."

<sup>13</sup> In the near future, PCIA will file an *ex parte* statement documenting the representations the FBI has made to PCIA regarding the FBI's intention to address the requirements of the messaging industry after it has addressed other segments of the telecommunications industry.

<sup>14</sup> 47 U.S.C. § 1003(a)(1).

<sup>15</sup> 47 U.S.C. § 1006(a)(1).

*Capacity Notice*—which was issued on March 12, 1998—made no mention of the paging industry. Further, the FBI has made no public statement regarding which paging assistance capability requirements it believes are mandated by Section 103. As a result, the lack of FBI resources to guide the industry on issues of paging capacity and paging capability have made it difficult for manufacturers of messaging equipment to design, build, and test CALEA-compliant equipment.

Time is of the essence, because, as described by TIA, once final technical standards are issued, it will take manufacturers approximately two years to: (1) develop the software necessary to meet CALEA's assistance capability requirements; and (2) work with their carrier customers to modify the carrier's equipment, facilities, and services to accept the new software.<sup>16</sup> A certain time lag between standards setting and the deployment of compliant equipment is even recognized as necessary by the law enforcement agencies.<sup>17</sup>

Even without guidance from the FBI, the paging industry has attempted to forge ahead by postulating law enforcement's requirements for paging from those established for wireline and wireless telephony. Unfortunately, however, such requirements do not easily translate. This is particularly true given the fact that "messaging" encompasses a wide variety of services, ranging from simple one-way paging to sophisticated applications that combine two-way voice and data services. For example, it is very difficult for carriers and manufacturers to determine precisely

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<sup>16</sup> TIA Petition at 10.

<sup>17</sup> *Id.* at 6 n.7 (citing testimony of the Attorney General before the House Appropriations Subcommittee for Commerce, State, Justice, the Judiciary and Related Agencies (February 26, 1998) (estimating that industry would require at least 18 months to build the equipment and software necessary to conform with the Commission's final decision)).

what the FBI would consider to be call content and call identifying information, and how it wants this information delivered.

Although the industry is permitted to establish technical standards without law enforcement input, proceeding in the absence of substantive FBI feedback leaves the industry potentially vulnerable to subsequent challenges. In fact, this is precisely what happened to the landline and broadband standard J-STD-025, *even after the FBI played a major role in that standards setting process*.<sup>18</sup> The paging industry is therefore understandably reluctant to design, develop, test, and manufacture equipment that meets these standards, and purchase this equipment in commercial quantities, without assurances by the FBI and the Commission that such equipment would not be rendered obsolete. By granting this extension, the Commission will make it possible for carriers to legally avoid such a financially imprudent course of action.

Despite the aforementioned risks of unilateral industry action, the paging industry, recognizing that the October 25, 1998 assistance capability requirements deadline was rapidly approaching, has taken a number of steps to jump start the standards-setting process. For example, PCIA sponsored several paging industry meetings in 1996 that focused on how paging carriers were going to comply with CALEA. In addition, PCIA hosted a meeting in December 1997, where the paging industry considered the applicability of J-STD-025 and the FBI's ESS and determined the concepts were not applicable to messaging providers. This resulted in the establishment of a new PCIA Technical Committee subcommittee on CALEA compliance. This

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<sup>18</sup> FBI and DOJ Joint Petition at 2 (filed March 27, 1998) ("the industry's interim standard [J-STD-025] is not adequate to ensure that law enforcement will receive all of the communications content and call-identifying information that carriers are obligated to deliver under Section 103 and the applicable electronic surveillance statutes").

joint carrier and manufacturer effort has already translated CALEA's assistance capability requirements into technical standards for one-way paging systems,<sup>19</sup> and expects to adopt standards for advanced messaging systems and ancillary messaging services in the very near future.

**IV. THE COMMISSION SHOULD FOLLOW TIA'S RECOMMENDATIONS AND ALLOW BROADBAND PCS CARRIERS TWO YEARS FROM THE DATE STANDARDS ARE PROMULGATED TO COMPLY WITH CALEA'S ASSISTANCE CAPABILITY REQUIREMENTS**

In its Petition, TIA requested that the Commission extend the deadline for compliance with CALEA's assistance capability requirements for two years from the date the final equipment standards are promulgated.<sup>20</sup> TIA based its extension request on two facts: (1) it is unreasonable to expect manufacturers to design and build, and carriers to purchase and install, network equipment that is likely to become suddenly and prematurely obsolete when the interim standard J-STD-025 is altered;<sup>21</sup> and (2) it will take the manufacturing community approximately two years from the date standards are finalized to make CALEA-compliant equipment commercially available. PCIA endorses this analysis.

First, TIA is correct in its assertion that it is wasteful of carrier and manufacturer resources to require carriers to meet the assistance capability requirements based on an interim

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<sup>19</sup> After minor editorial changes and revisions, PCIA expects to share these standards with law enforcement and the Commission in the near future.

<sup>20</sup> TIA Petition at 13. Section 107(c)(3)(B) limits extensions to two years in length. Therefore, TIA actually requested that compliance be "tolled" during the pendency of the standards-setting rulemaking, and *then* that the two year extension take effect. PCIA endorses the substance of this request.

<sup>21</sup> J-STD-025 covers, landline, cellular, and broadband PCS equipment.

standard for PCS equipment. Such a requirement would entail manufacturers committing design, development, and testing resources to the creation of network equipment that might have a commercially useful life of only the time it takes for a new, permanent standard to be promulgated. As noted by TIA, any modification to J-STD-025 could require complex and labor intensive changes in a manufacturer's individual CALEA solution.<sup>22</sup> Manufacturers have therefore been understandably reluctant to proceed past feature specification development into actual implementation.

Similarly, broadband PCS carriers should not be required to purchase equipment that might be quickly rendered obsolete. Given the fact that most broadband PCS carriers are in the midst of building out their networks and attempting to increase their customer bases, these funds are sorely needed to meet core public interest service goals. It would therefore be manifestly contrary to the public interest for the Commission to require PCS carriers to engage in what amounts to duplicative and wasteful spending.

Second, as described by TIA, it will take manufacturers approximately two years after final standards are issued to: (1) develop the software necessary to meet CALEA's assistance capability requirements; and (2) work with their carrier customers to modify the carrier's equipment, facilities, and services to accept the new software.<sup>23</sup> A certain time lag between standards setting and the deployment of compliant equipment is recognized as necessary by all parties, including the FBI/DOJ.<sup>24</sup> PCIA therefore joins with TIA in requesting that the

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<sup>22</sup> TIA Petition at 6.

<sup>23</sup> *Id.* at 10.

<sup>24</sup> *Id.* at 6 n.7 (citing testimony of the Attorney General before the House

(Continued...)

Commission extend the compliance deadline for meeting the assistance capability requirements for PCS providers to the date that is two years from the date the Commission's rules regarding final technical standards take effect. Such a compliance schedule should give manufacturers sufficient time to design, develop, and test CALEA-compliant broadband PCS equipment, and should give carriers sufficient, and needed, time to install and deploy this equipment after it becomes available.

**V. THE COMMISSION HAS THE JURISDICTION TO ISSUE A BLANKET EXTENSION, AND SHOULD DO SO AS QUICKLY AS POSSIBLE**

In addition to seeking comment on whether it should extend CALEA's compliance deadline, the Commission sought comment on how it can "most quickly and efficiently" grant such an extension.<sup>25</sup> In this context, the broad language of CALEA, combined with the Commission's "necessary and proper" authority under Section 4(i) of the Communications Act, give it the necessary authority to grant an extension to all telecommunications carriers, on a blanket basis, without the necessity for individual carrier-by-carrier filings. Further, because the drafting, filing, and processing of individual extension requests for each carrier in the United States would represent an enormous waste of both FCC and carrier resources, the public interest will plainly be served if the Commission uses this statutory authority to grant a blanket extension.

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(...Continued)

Appropriations Subcommittee for Commerce, State, Justice, the Judiciary and Related Agencies (February 26, 1998) (estimating that industry would require at least 18 months to build the equipment and software necessary to conform with the Commission's final decision)).

<sup>25</sup> Notice at 4.

There are three statutory avenues by which the FCC can extend the deadline for complying with the assistance capability requirements of Section 103 of the Communications Assistance For Law Enforcement Act (“CALEA”). First, Section 107(c)(1) states that in order to be granted an “extension[] of the deadline for complying with the assistance capability requirements under section 103,” “*a telecommunications carrier*” must file a petition with the FCC.<sup>26</sup> Second, under Section 107(b), if industry associations or standards-setting organizations fail to issue technical requirements, or *any “person [that] believes that such requirements or standards are deficient,”* the agency or person can petition the FCC to establish technical standards.<sup>27</sup> After these new standards are promulgated, the Commission is empowered to “provide a reasonable time and conditions for compliance with and the transition to any new standard, including *defining the obligations of telecommunications carriers under section 103 during the transition period.*”<sup>28</sup> Finally, under Section 109(b)(1), “*any interested person*” may petition the Commission for a determination that compliance with the assistance capability requirements is not “reasonably achievable” for equipment, facilities and services deployed after January 1, 1995.<sup>29</sup>

While Section 107(c)(1) is the most straightforward way for the Commission to grant an extension of the assistance capability requirements, the plain language of this section limits petitioning parties to “telecommunications carriers.” Despite this limiting language, the

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<sup>26</sup> 47 U.S.C. § 1006(c)(1) (emphasis added).

<sup>27</sup> 47 U.S.C. § 1006(b) (emphasis added).

<sup>28</sup> 47 U.S.C. § 1006(b)(5) (emphasis added).

<sup>29</sup> 47 U.S.C. § 1008(b)(1) (emphasis added).



Commission could use its broad authority under Section 4(i) of the Communications Act to allow trade associations—on behalf of their carrier members—to submit extension requests. In particular, Section 4(i) empowers the Commission to “perform any and all acts ... not inconsistent with [the Communications Act], as may be necessary in the execution of its functions.”<sup>30</sup> In this case, it is plainly consistent with the purpose of Section 107(c)(1) and CALEA in general, for the Commission to review a small number of trade association filings rather than the thousands of petitions that would be filed if each carrier were required to file individually.

Alternatively, rather than granting relief under Section 107(c)(1), the Commission could grant an industry-wide extension pursuant to Sections 107(b) and 109(b)(1), under which any interested “person” can seek relief from the FCC. Section 107(b) is particularly applicable, because the trade associations in question are seeking an extension of the compliance date *and* asking the Commission to take a more active role in the standards-setting process.<sup>31</sup> Similarly, Section 109(b)(1) is applicable under the current circumstances because given the pendency of the October 25, 1998 compliance deadline, and the lack of CALEA-compliant equipment, it is clear that compliance will not be “reasonably achievable” on October 25, 1998.

Finally, a blanket, industry-wide extension is much more efficient than requiring each carrier to make an individual filing. Such individual filings are expensive and time consuming for carriers and manufacturers to draft, and consume a similar amount of FCC resources. Moreover, all of this additional effort will result in little or no net information gain for the

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<sup>30</sup> 47 U.S.C. § 154(i).

<sup>31</sup> See CTIA, PCIA, and USTA Response to the Petitions (April 9, 1998).

Commission, because virtually every petition will reveal the same set of facts—a rapidly approaching compliance deadline, an unstable set of standards, no commercially available CALEA-compliant equipment, and uncertainty about narrowband capacity requirements.<sup>32</sup>

Against this background, the Commission should take swift and decisive action to issue an extension order. Trade associations for the affected segments of the telecommunications industry have requested such relief, and the Commission has the authority to grant these requests. Further, at the end of the comment cycle, the Commission should have an ample factual record on which to base its decision. Any further delay by the Commission at this point can only result in a flood of extension requests filed by individual carriers that are attempting to protect their self-interest. In order to avoid such a result, the Commission should move ahead with all due speed.

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<sup>32</sup> The FBI has yet to promulgate capacity requirements for paging providers. *Final Capacity Notice*, 63 Fed. Reg. at 12,200.

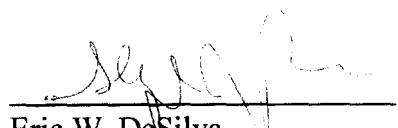
## **VI. CONCLUSION**

For the reasons set forth above, PCIA requests that the Commission extend the deadline for complying with the assistance capability requirements of CALEA as follows: (1) for messaging providers, until two years after the date final technical standards for paging equipment are promulgated; and (2) for broadband PCS providers, until two years after the date final technical standards for PCS equipment are promulgated. Such Commission action is fully consistent with CALEA and the public interest, convenience and necessity.

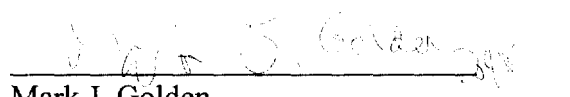
Respectfully submitted,

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